Filed 9/20/06 In re M.S. CA2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| In re M. S., a Minor.<br>JERMAINE S.,<br>Petitioner,<br>v.<br>THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,<br>Respondent.<br>LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES et al.,<br>Real Parties in Interest. | B191843<br>(Super. Ct. No. CK47263) |

ORIGINAL PROCEEDING; petition for writ of mandate. Emily Stevens, Judge. Petition denied.

Paul Mark Davis for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, Lisa Proft, Deputy County Counsel for Real Party in Interest Los Angeles County Department of Children and Family Services.

Petitioner Jermaine S. seeks extraordinary writ relief (Welf. & Inst. Code., § 366.26, subd. (*l*);[1] Cal. Rules of Court, rule 38.1) from the juvenile court's order, made at the dispositional hearing after the court denied reunification services, setting a hearing pursuant to section 366.26 to consider termination of parental rights and implementation of a permanent plan for his seven-month-old daughter M. S. We deny the petition, finding no merit in Jermaine S.'s contention the juvenile court erred in denying reunification services.

## FACTUAL AND PROCEDURAL BACKGROUND

1. *The Detention of M. S.*

In mid-February 2006, shortly after her birth, the Los Angeles County Department of Children and Family Services (Department) filed a petition under section 300 to declare M. S. a dependent child of the juvenile court. The petition alleged (inter alia) Jermaine S. had a history of engaging in domestic violence with M. S.'s mother, Lenora Y., as well as a history of mental and emotional problems, and had been involuntarily hospitalized for attempted suicide. The petition further alleged two older siblings of M. S., Jermaine S. Jr. and Teola S., had been removed from Jermaine S. and were receiving permanent placement services.

In its report for the detention hearing the Department indicated Jermaine S. Jr. had been removed from Jermaine S. due to Jermaine S.'s substance abuse and criminal activity, parental rights had been terminated and Jermaine S. Jr. was currently placed with his paternal grandmother in adoptive planning. Reunification services for Jermaine S. with Teola S. had also been terminated; and a hearing to select a permanent plan (§ 366.26) was set for May 11, 2006. The Department advised that Jermaine S. had enrolled in therapy in January 2006 but had only participated in two sessions; was not participating in counseling with the children's mother; had seen his psychologist just once; had failed to provide proof he was taking his medication; and had not submitted

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[1] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

proof that he was participating in parenting classes. Based on his failure to reunify with M. S.'s siblings, lack of compliance with his court-ordered case plan and pattern of inconsistent visitation, the Department recommended the court deny reunification services to Jermaine S. and proceed directly to select a permanent plan for M. S.

On February 17, 2006 the court ordered M. S. detained and placed in foster care with reunification services and visitation for Jermaine S. The court appointed an expert (Dr. Michael Ward) to conduct a psychological examination of Jermaine S. (Evid. Code, § 730) and set the matter for the jurisdiction hearing.

2. *The Jurisdiction Hearing*

In its report for the jurisdiction hearing the Department stated Jermaine S. had recently enrolled in individual counseling, had told the social worker he was taking his medication and had appeared for three of four scheduled visits with M. S. The Department explained that Jermaine S.'s actions were consistent with his history of enrolling in programs immediately prior to court hearings and then failing to follow through and complete any of them.

At the March 20, 2006 jurisdiction hearing Jermaine S. waived his rights and submitted the petition on the basis of the Department's reports. (See *In re Malinda S.* (1990) 51 Cal.3d 368.) The court sustained the Department's dependency petition, as amended to allege Jermaine S. had failed to reunify with Jermaine S. Jr.[2] and Teola S.; the court had ordered termination of his parental rights; Jermaine S. had not resolved the issues that had brought Jermaine S. Jr. and Teola S. to the attention of the Department; and Jermaine S. had unresolved issues of anger management, lack of impulse control, domestic violence and improper care and supervision of his children. The court ordered the Department to prepare a supplemental report addressing the issue of family reunification and continued the matter to April 19, 2006. The court had previously received Dr. Ward's report of his Evidence Code section 730 evaluation.

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[2] Three days earlier, on March 17, 2006, the court had terminated its jurisdiction as to Jermaine S. Jr. after his adoption was finalized.

3. *The Contested Disposition Hearing*

In its supplemental report the Department stated its social workers had been providing services since 2004 for Jermaine S. and Lenora Y.[3] Neither parent cooperated with the Department until Teola S. was detained for the second time in 2005 after Jermaine S. physically assaulted Lenora Y. and then attempted suicide by cutting himself and taking an excessive amount of medication. Later, Jermaine S. enrolled in several court-ordered programs but failed to complete any of them. The Department further reported Jermaine S. and Lenora Y. were unable to maintain their apartment, they had recently moved out, and Jermaine S. had refused to disclose their whereabouts or meet with the social worker. In addition, the social worker had been unable to communicate with Jermaine S.'s therapist, his psychiatrist or his parenting facilitator. Lenora Y.'s therapist reported Lenora Y. had disclosed that Jermaine S. choked her while she was pregnant with M. S. and threw her to the floor; the therapist also stated the parents were "extremely co-dependent" and Lenora Y. was very protective of Jermaine S. The parents' conjoint counselor stated that the parents had been attending sessions for one month, it was too soon to determine whether they were making progress and Jermaine S. had told the counselor that he was not taking his medication.

Dr. Ward's report stated Jermaine S. had admitted both a history of domestic violence and that he had "done basically every drug" and had used about a pound of marijuana a month, having last smoked marijuana in February 2006. Jermaine S. also told Dr. Ward he had been psychiatrically hospitalized several times and had been diagnosed with bipolar disorder. Dr. Ward opined, although Jermaine S. appeared to be making changes, it was difficult to predict the permanency of the changes in view of his past behavior: "[T]he prognosis for reunification . . . is certainly somewhat poor, guarded, or limited."

On April 19, 2006 the matter was continued to May 11, 2006 for a contested dispositional hearing. On May 11 the Department submitted an addendum report stating

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3 Lenora Y. is also the mother of Jermaine S. Jr. and Teola S.

Jermaine S. had failed to sign a release of information as ordered by the court on April 19. As a result the social worker had been unable to obtain information from his therapist. The conjoint counselor had not heard from either parent; and, when he called Jermaine S., he was told the cellular telephone had been disconnected. Additionally, Jermaine S. had cancelled several visits with M. S. just an hour prior to the scheduled meeting with no explanation; had simply failed to appear for several other visits; and, when he did attend, he was not enthusiastic on arrival, often cut the visits short and did not exhibit sadness at the completion of the visits. On May 11, 2006 the hearing was continued to May 24, 2006 because Jermaine S., who had been arrested on a probation violation, did not appear. The hearing was continued once again to June 12 because Jermaine S. was not transported to court from jail. On June 12, 2006 the Department submitted an additional report, indicating that on June 7, 2006 Jermaine S. had been sentenced to 180 days in jail for violating his probation and would be released in December 2006.

The contested hearing took place on June 12, 2006.[4] Jermaine S. testified he was incarcerated for failure to report for his probation officer but, because he had received 54 days of custody credit, would be released in two or three weeks. Jermaine S. also testified he was taking his prescribed medication and had been participating in programs and visiting M. S. prior to his incarceration. The social worker who had worked with the family over the previous three years testified Jermaine S. had enrolled in a parenting class, but his attendance was sporadic after M. S.'s birth; Jermaine S. had failed to maintain regular contact with the Department; and she could not confirm Jermaine S.'s compliance with his medication regimen because he failed to sign a release of information with his doctor. The social worker further testified Jermaine S. had 18 possible visits with M. S. since February 16, 2006, but did not appear for six of them and was in jail for the remaining 12 visits.

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[4] On the same date the juvenile court also conducted a hearing to select and implement a permanent plan for Teola S. (§ 366.26), terminated Jermaine S.'s parental rights as to her and selected adoption as the permanent plan.

After hearing argument,[5] the juvenile court denied reunification services to Jermaine S. (and also to Lenora Y.) pursuant to sections 361.5, subdivisions (b)(10) and (b)(11) and, pursuant to section 366.26, set the matter for a September 18, 2006 selection and implementation hearing. The court observed that, in the case of each of his children, Jermaine S. initially made efforts to comply with his case plan and treat his problems, but "everything after that is sporadic, with always an excuse for why it's not working out." The court emphasized Jermaine S. had made no effort whatsoever to resolve his domestic violence problems, noting he had not shown progress despite the Department's provision of services specifically tailored to his needs and, in fact, was now in a worse situation than he was before Teola S. was removed from his care. The court concluded the record made amply clear Jermaine S. had not made a reasonable effort to treat the problems that led to the removal of Jermaine S. Jr. and Teola S. from his custody.

## DISCUSSION

1. *The No-reunification Statutes*

Recognizing that in certain categories of cases it is futile to provide reunification services, the Legislature has enacted provisions for "fast-track" permanency planning under specified circumstances. (See *Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 750-751; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 70-71.) One such situation is when reunification with a sibling has failed previously and the parent has not made a reasonable effort to treat the problems that led to the sibling's removal from the parent's custody. (§ 361.5, subd. (b)(10) [reunification services for sibling terminated; parent has not subsequently made reasonable efforts to treat problem that led to child's removal], (11) [parental rights over sibling terminated; parent has not subsequently made reasonable efforts to treat problem that led to child's removal].) Section 361.5, subdivision (b)(10) and (11) addresses the problem of recidivism by a parent despite

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[5] M. S.'s counsel agreed with the Department's recommendation that the court not offer reunification services to Jermaine S., noting his poor visitation record, lack of suitable housing and failure to make sufficient efforts to treat the problems that caused him to lose custody of his children.

reunification services by positing that a parent who has failed in one course of reunification is unlikely to succeed with a new round of services. (See *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) When a case falls within these provisions, "the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources" (*ibid.*); and the juvenile court lacks power to order reunification unless it finds, by clear and convincing evidence, that reunification is in the child's best interest. (§ 361.5, subd. (c), 2d par.)

2. *Jermaine S. Did not Make a Reasonable Effort to Treat the Problems That Led to the Removal of M. S.'s Siblings*

Substantial evidence in the record supports the juvenile court's finding that Jermaine S. did not make a reasonable effort to treat the problems that led to the removal of M. S.'s older siblings from his custody. During the period from Jermaine S. Jr.'s removal from his father's care until the dispositional hearing as to M. S., Jermaine S. failed to complete a single program; failed altogether to address his domestic violence and anger management problems; was inconsistent in taking his prescribed medication; continued to use marijuana; and, on the eve of the dispositional hearing, violated his probation and was incarcerated and unable even to visit M. S.

3. *Reunification Is Not in M. S.'s Best Interest*

Jermaine S. presented no evidence in the juvenile court to show reunification was in M. S.'s best interest, nor does he suggest in this writ proceeding he satisfied his burden of proving by clear and convincing evidence reunification with M. S. would be in her best interests.[6] In any case, there is ample support for the juvenile court's conclusion providing reunification services to Jermaine S. would not be in M. S.'s best interests. The record, as we have set forth, shows that, during the entire pendency of the dependency proceedings involving his three children, Jermaine S. made little effort to

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6 "The 'clear and convincing evidence' test requires a finding of high probability, based on evidence 'so clear as to leave no substantial doubt' [and] 'sufficiently strong to command the unhesitating assent of every reasonable mind.'" (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552, quoting *In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

resolve the problems that led to their removal from his custody and to turn his life around and become a responsible parent. Any further delay in the implementation of a permanent plan would clearly be detrimental to M. S., who has a fundamental right to stability and permanence. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 307; *In re Jasmon O.* (1994) 8 Cal.4th 398, 419.)

**DISPOSITION**

The petition is denied on the merits.

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PERLUSS, P. J.

We concur:

JOHNSON, J.

WOODS, J.